Appendix

OPINION OF APPELLATE DIVISION
(December 5, 1967)

PER CURIAM.

Respondent Louis Kaye was disbarred by this Court in 1966 (Matter of Kaye, 24 A.D.2d 345, 266 N.Y.S.2d 69, lv. to appeal denied, 17 N.Y.2d 422, 268 N.Y.S.2d 1028, 216 N.E.2d 32, 17 N.Y.s2d 731). The Supreme Court of the United States granted certiorari, vacated the judgment and on February 13, 1967 "remanded [the matter] to the Appellate Division of the Supreme Court of New York, First Judicial Department, for reconsideration in light of Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 636, 17 L.Ed.2d 574" (Kaye v. Co-Ordinating Committee on Discipline of the Association of the Bar of the City of New York, 386 U.S. 17, 87 S.Ct. 848, 17 L.Ed.2d 698).

The petitioner, the Coordinating Committee on Discipline now again, on notice, moves for an order sustaining each of the charges of professional misconduct which were lodged against the respondent, excepting only that portion on charge 3 which relates to the Finegold specification. There were nine charges involving (1) farming out of negligence cases on which respondent was contingently retained, under arrangements whereby respondent obtained loans to be repaid out of respondent's expected share of the fees without regard to services rendered by respondent; (2) conversion for more than a year of a client's funds of moneys to be paid to a doctor; (3) failure to remit settlement funds to personal injury claimants within the time required by the Rules of the Court; (4) compromise of infants claims without court order; (5) failure to file statements of retainer; (6) failure to file closing statements; (7) failure to maintain a special account for deposit of settlement funds; (8) harboring a disbarred lawyer in respondent's law office; and (9) the use of profanity and the addressing

of a racial epithet to a witness at the close of an action in the Supreme Court (see Matter of Kaye, 24 A.D.2d 345, 347, 266 N.Y.S.2d 69, 70).

The respondent in this proceeding cross-moves for various relief including an order of re-reference to hear the matter de novo, a remand for reconsideration of the denial of a motion by respondent to suppress certain evidence, reconsideration of a denial of a motion for discovery and inspection and disaffirmance of the referee's report previously affirmed by this Court.

The motion and cross-motion constitute a proper hearing on notice and on the filed papers.

The motion of the Coordinating Committee is granted as herein indicated and the cross-motion of respondent is denied.

Examination of the record reveals that there is sufficient without respondent's testimony to sustain charges 1,2,3 as modified by eliminating the Finegold specification, 4,5,6,8 and 9. As to such charges the constitutional prohibitions or limitations have no controlling application.

Significant is the following statement concerning respondent in Matter of Kaye, 24 A.D.2d 345, at 350, 266 N.Y.S.2d 69, at 73, supra:

> "In determining the measure of disciplinary sanction to be metered out, we have, of necessity, considered respondent's past disciplinary record. Respondent was admitted to the Bar by the Appellate Division, Second Department, on May 7, 1924. In January, 1928, respondent was disbarred by the Second Department, after he had pleaded guilty to a felony count in an indictment in the United States District Court for the Eastern District of New York charging him with using the mails to defraud casualty companies into paying money to fraudulent claimants for alleged personal injuries (Matter of Kaye, 222 App.Div. 829, 226 N.Y.S. 391). In June, 1935, respondent was reinstated by the Second Department, after he had received a Presiden-

tial pardon. (Matter of Kaye, 243 App.Div. 615, 277 N.Y.S. 636).

"In April, 1953, this court suspended respondent from practice for one year on a charge of knowlingly issuing bad checks (Matter of Kaye, 281 App.Div. 508, 509, 120 N.Y.S.2d 822, 823). Our *Per Curiam* in that case noted that: 'Respondent has previously been admonished with respect to his conduct and professional associations. He appears not to have taken the admonition sufficiently seriously.' Respondent was reinstated by this court on September 1, 1954.

"Despite these prior difficulties, respondent has evidently continued to violate the rules of correct professional conduct in grave respects. His conduct strongly suggests the likelihood that he will continue to bring the profession into disrepute."

Accordingly the report of the referee is again confirmed with respect to the charges enumerated above. Respondent is disbarred.

Respondent disbarred effective January 5, 1968. Cross-motion of respondent denied in all respects. All concur.

DISBARMENT ORDER OF APPELLATE DIVISION
(December 5, 1967)

An order of this Court having been made and entered on the 13th day of January, 1966, as amended by order of this Court entered on the 19th day of April, 1966, disbarring respondent from practice as an attorney and counselor-at-law in the State of New York

And thereafter, and on June 30, 1966, the Supreme Court of the United States having docketed a petition for a writ of certiorari; and thereafter, and on February 13, 1967, having granted certiorari and having vacated the order of this Court entered on January 13, 1966, as amended by order entered on April 19, 1966, and having remanded the

matter to this Court for reconsideration in the light of *Spevack v. Klein,* 385 U.S. 511,

And thereafter, and on April 3, 1967, this Court having entered an order making the mandate and judgment of the United States Supreme Court the order of this Court, and having ordered The Co-ordinating Committee on Discipline to pay to respondent herein the sum of $100 as costs,

And petitioner, The Co-ordinating Committee on Discipline, having moved this Court for an order sustaining each of the charges of professional misconduct set forth in the petition with the exception of the Robert and Lillian Finegold specification of Charge No. 3; and the respondent having cross-moved this Court for an order of re-reference to hear the matter de novo, reconsideration of the denial of a motion by respondent to suppress certain evidence, reconsideration of a denial of a motion for discovery and inspection, disaffirmance of the Referee's report previously confirmed by this Court; and for other relief,

Now, upon reading and filing the notice of motion, dated April 27, 1967, with proof of due service thereof, the affidavit of Angelo T. Cometa, sworn to the 17th day of May, 1967, the cross-notice of motion, dated May 12, 1967, with proof of due service thereof, and the affidavit of Louis Kaye, sworn to the 22nd day of May, 1967; and after hearing Mr. Angelo T. Cometa for the motion and in opposition to the cross-motion, and Mr. Louis Kaye, respondent pro se, for the cross-motion and in opposition to the motion of petitioner; and due deliberation having been had thereon, it is unanimously

Ordered that the motion and cross-motion constitute a proper hearing on notice and upon the filed papers and upon all of the proceedings heretofore had herein, and the Court having reconsidered the matter in the light of *Spevack v. Klein;* and upon such reconsideration, it is further unanimously

Ordered that the motion of The Co-ordinating Committee on Discipline is granted to the following extent: with

respect to the petition verified the 12th day of May, 1964, Charges No. 1, 2 and 3, as modified by eliminating the Finegold specification, are sustained; Charges No. 4, 5, 6, 8 and 9 are sustained and the report of Raphael P. Koenig, Esq., the Referee herein, filed in the office of the Clerk of this Court on the 27th day of July, 1965, be, and the same hereby is, confirmed with respect to the sustained charges enumerated above, and it is further unanimously

Ordered that the cross-motion of the respondent be, and the same hereby is, in all respects denied; and it is further unanimously

Ordered that the said Louis Kaye (admitted as Louis Kaminetsky) be and he hereby is disbarred from practice as an attorney and counselor-at-law in the State of New York effective January 5, 1968; and it is further unanimously

Ordered that the name of the said Louis Kaye (admitted as Louis Kaminetsky) be struck from the roll of attorneys and counselors-at-law in the State of New York effective January 5, 1968, and it is further unanimously

Ordered that the said Louis Kaye (admitted as Louis Kaminetsky) be and he hereby is commanded to desist and refrain from the practice of the law in any form, either as principal or agent, clerk or employee of another, effective January 5, 1968; and it is further unanimously

Ordered that the said Louis Kaye (admitted as Louis Kaminetsky) be and he hereby is forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, effective January 5, 1968; and it is further unanimously

Ordered that the said Louis Kaye (admitted as Louis Kaminetsky) be and he hereby is forbidden to give to another an opinion as to the law or its application or any advice in relation thereto, effective January 5, 1968.

Judgment of Court of Appeals
(June 14, 1968)

MTR OF KAYE ORDER AFFIRMED WITHOUT COSTS NO OPINION ALL CONCUR

RAYMOND J CANNON CLERK COURT OF APPEALS ALBANY.